

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3892 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

KOKILABEN W/O DILIPSINH UDESINH JHALA

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 3892 of 2001
MS DR KACHHAVAH for Petitioner No. 1
MR K.T.DAVE, AGP for Respondents No. 1-3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 30/10/2001

ORAL JUDGEMENT

In exercise of powers under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 ('the Act' for short), Commissioner of Police, Ahmedabad City, Ahmedabad, vide order dated April 17, 2001 (Annexure-A to the petition) detained the petitioner/detenu.

2. The averments made in the petition and the grounds of detention manifest that the detaining authority has considered the petitioner as a bootlegger within the meaning of Section 2(b) of the Act as five cases under the Prohibition Act are registered against the petitioner which are pending investigation/trial and statements of two anonymous witnesses are recorded and therefore, according to the detaining authority her activities are prejudicial to the maintenance of public order and, therefore, power under Section 9(2) of the Act is exercised by the detaining authority by not disclosing the identity of those witnesses, detained the petitioner/detenu.

3. By filing this petition under Article 226 of the Constitution, petitioner has assailed the impugned order of detention on various grounds and prayed to issue a writ of habeas corpus or any other appropriate writ, order or direction quashing the impugned order of detention and setting her at liberty forthwith.

4. Though the petitioner has challenged the order of detention on various grounds, Ms. D.B.Kachhvah, learned advocate for the petitioner has restricted her arguments to the effect that subjective satisfaction recorded by the detaining authority cannot be considered as genuine as there was no enough material necessitating the detention of a person in custody. The detaining authority has observed in his order that petitioner would indulge in the same activity after being released on bail and therefore, it has become necessary to detain her. On this sole ground, the order of detention deserves to be quashed and set aside.

5. Mr K.T.Dave, learned AGP has appeared on behalf of the respondent and has opposed the petition by filing affidavit in reply sworn by P.C.Pande, Commissioner of Police, Ahmedabad City, Ahmedabad. He, however, does not dispute the factual aspect with regard to the observations made by the detaining authority in the last para of the order of detention. He, therefore, urged to pass appropriate order.

6. I have considered the submissions advanced by the learned advocates appearing for the parties. I have also perused the averments made in the petition as well as the documents annexed therewith and the impugned order.

7. It is true that on having perusal grounds of detention, the detaining authority has stated therein that the petitioner is carrying the activities of selling

country liquor in a bulk quantity. She has been released on bail in all the offences registered against her. The detaining authority has observed in its order that petitioner would indulge in the same activity after being released on bail and, therefore, with a view to curb the antisocial activities of the petitioner and for the purpose of maintenance of public order the petitioner's detention has become necessary and therefore, order of detention is passed. In fact, petitioner was released on bail in connection with the last offence and on the same day order of detention came to be passed. The detaining authority was not aware at the time of passing the impugned order as to whether petitioner is in custody or is released on bail, therefore, it can be said that the subjective satisfaction recorded by the detaining authority was not genuine. Therefore, it can be said that the impugned order of detention passed by the detaining authority is in clear non-application of mind and on this sole ground petition deserves to be allowed by quashing and setting aside the order of detention and setting the petitioner at liberty.

8. A similar question arose before the Supreme Court in the case of ABDUL SATHAR IBRAHIM MANIK VS. UNION OF INDIA - 1991 (SC) 2261 in which it has been held that the detention order can validly be passed even in a case of a person who is already in custody. In such a case it must appear from the ground that the authority must aware that the detenu was in custody.

9. Besides this, statements of two anonymous witnesses are recorded on April 16, 2001 and verified by the detaining authority on April 17, 2001 and the impugned order of detention came to be passed on the same day, therefore, also it can be said that power under Section 9(2) of the Act is improperly exercised by the detaining authority.

10. A similar question arose in the case of KALIDAS C KAHAR V. STATE OF GUJARAT 1993 (2) GLR 1659 in which proposal was made on October 16, 1992 and detention order was passed on October 17, 1992 and therefore, it was held to be a wrong exercise of power under Section 9(2) which has affected the detenu's right of making an effective representation under Article 22(5) of the Constitution and, therefore, the detention order was quashed.

11. Applying the principle laid down by this Court in the case of Kalidas's case (supra) it is clear that the present case is identical to the case referred to above. In the present case also statements of two witnesses are

recorded on April 16, 2001 and verified by the detaining authority on April 17, 2001 and the order of detention came to be passed on the same day, and hence, I am of the opinion that the order impugned cannot be sustained and deserves to be quashed and set aside.

12. On overall view of the matter the order of detention stand vitiated on both the aforesaid grounds and the petition deserves to be allowed by quashing and setting aside the order of detention and setting the petitioner at liberty forthwith.

13. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The impugned order of detention dated April 17, 2001 is hereby quashed and set aside. The petitioner/detenu is ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute. No order as to costs. Direct service is permitted.

(A.M.Kapadia, J)
Jayanti*